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File No. O. Talukdari Tenure 152

p 8 E Legal Dept.

A **BRANCH**

Subject:— Opinions under the Bombay Talukdari Tenure Abolition Act 1949

File No. O. Talukdari Tenure /52

Gen. 194 e.

213-A

C O N T E N T S.

Legal Department File No. O. TalukdariTenures/52

Sr No.	R.I./	O.No-	Subject	Pages
			Opinions under the Bombay Talukdari Tenure Abolition Act 1949.	
1.		2717 11-6-52	Whether the forests of which management was taken over were situated outside the wants in order to consider whether the management was validly assumed.	1
2.		12047 22-7-52	That the Taluqdars of the estates which are held subject to the payment of udhad jama are entitled to hold their estates on payment only of that Jama under section 5(2)(a) of the Bombay Taluqdari Tenure Abolition Act.	3
3-		14837/A 11-9-52	Whether the state Govt(1) is only bound to pay compensation to the Thakores in respect of the trees standings on the Talukdari Lands- and 1) entited to recover the whole of the contract amount for the Thakores.	5- 7
4.		16439/A 7-10-52	Whether the contractors are entitled to the balance of the contract money in adition to the full amount of compensation payable under section 7 of the Bombay Taluqdari Tenure Abolition Act.	9
5.		24662 23-10-52	Whether the resort to section 29(F) of the Gujarat Taluqdars Act 1888 is possible to in view of its repeal by the Bombay taluqdari Abolition Act 1949	11

L.D.R.I.No.9908dt.17-5-52

Submitted.

Please see R.L.A.'s opinion No. 13034 dated 13-8-51 at P.21 of the C/S R.D. was therein advised to ascertain whether the forests of which management was taken over were situated outside the watas in order to consider whether their management was validly assumed. It is now ascertained that the forests are outside the watans and the papers are again referred to R&L&AS

2. As the forests are outside the wantas, the management would be deemed to be validly assumed and as advised by the R.L.A. in his opinion No. 13034 dt. the 13th August 1951, there would be no objection to continue the same.

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As in para 2 of Shri Rajen's Note

D.S.(Civil) Sd/-
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Addal.Secy.

Reply as at A to A

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M.R. to A and F.D. No.9717 dated 11-6-52

M.R.D.
15-6-56
C.4

Legal Department

R.L.A.'s opinion No. 19385,dated the 3rd December 1951 was based on the information supplied by the Collector of Kaira in his letter at page 35 ante that the Sonipur Estate does not form part of Wanta Lands. If it is not found that the information supplied by the Collector was incorrect and that the estate is held on wanta tenure subject to the payment of udhad jama the position will be entirely different. The R.L.A. has already advised that the taluqdars of the estated which are held subject to the payment of Udhad Jama are entitled to hold their estates on payment only of that jama under section 5(2)(a) of the Bombay Taluqdari Tenure Abolition Act(see R.L.A.'s opinion No.11833, dated the 25th July 1951); and in the circumstances if the sonipur estate is held on Udhad Jambandhi tenure the rights of the Thakore will be saved under section 5(2) of the Act. Further under section 6 of the Act beds of rivers, streams, nallas, lakes, wells and tanks and all canals, and water courses, and all standing and flowing water which are situate within the limits of the wantas are excluded from the operation of the Act. Consequently, the Thakore will be entitled to claim the bed of the river falling within the limits of his wanta (see Harbarsingji v. Secretary of State, 43Bom. L.R. 167). It is further stated in these papers that the claim of the Thakore to the river bed has been conceded by Mr. Wilson who fixed the boundary in 1874. If this be correct, there will be no question of Government claiming any rights over the bed included in the wanta limits. The agreement entered into by the Thakore with the Associated Cement Co- will not, therefore be afected by the provisions of the Bombay Taluqdari Tenure Abolition Act, 1949. Section 17(c)however, is not applicable to this agreement. That

section --

P.T.O

section, as pointed out by the G.L.A. in his opinion No. 19385, dated the 3rd December 1951 has reference to section 5, sub-section(2),clause(b)

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Additional Secretary to Governmnet

U.R.to R.D. No. 12047 dated the 22nd July 1952.

M.B.D.
14-6-56
C.4

Legal Department

The Thakores of Khamaria-Sonipur and Shivrajpur Estates had, before the coming into the operation of the Bombay Talukdari Tenure Abolition Act, 1949, given some of the forest coupes to contractores who have paid a part of the contract amount to the Thakores. After the coming into operation of the said Act the contractores were not allowed by the Forest Department to proceed with the execution of the contract unless the they paid the balance of the contract money into the Government Treasury. The contractors accordingly paid the remaining amount of the contract money to Government whereupon necessary authorizations were issued to them. The Thakores have now applied for recovery of the amount on account of the contracts executed by them. The agriculture and Forests Department considers that in view of theprovi sions of the Act of 1949 the State Government is only bound to pay compensation to the Thakores in respect of the trees standing on the Talukdari Lands on the date of the coming into force of that Act; and is entitled to recover the whole of the contract amount from the Thakores. The R.L.A. is requested to advise.

Proviso(a) to section 17 of the Bombay Talukdari Tenure Abolition Act, 1949 saves the validity, invalidity, effect or consequences of any alienation of or any encumbrance created on a talukdri land or of anything already done or suffered to be donen under the enactmets repealed by that section before the date of the commencement of the Act. The Act previously appoint applicable to the Estates in question appears to be the Gujarat Talukdars' Act, 1889, mentioned in schedules II. sub-section(i) of section 31 of that Act provided that no encumbrance on a taludar's estate, or on any portion thereof, made by the taludar after that Act came into force was valid as to any time beyond such taluqdar's natural life unless such encumbrance was

such incumbrance was made with the previous consent of the Taluqdari Settlement Officer, or of some other officer appointed by the State Government Under this section incumbrances made without the consent of the Taluqdari Settlement Officer or the Orricer appointed by Government were valid for the life-time of the Taluqdars. The expression"incumbrance" as defined in section 2(1) (e) included a mortgage, charge, usufructuary grant and any interest other than that of an ordinary tenant or of an alienee, etc., "Usufruct" means the right of enjoying the use or advantages of another's propety, short of destorying or wanting its substance(Aiyar's Law Lexicon P-1311). The grant of forest contracts in the present case would appear to be usufractuary grants within the the meaning of section 2(1)(e). If therfore the contracts were entered into by the present taluqdars who are claiming the balance of the contract money they were valid under section 31 of the Gujarat Taluqdar's Act; and would be saved under proviso(a) to section 17 of the Act. In that case the Thakores would appear to be entitled to the balance of the contract money recovered by the forest Authorities. The view expressed by the Agriculture and Forest Department is not correct.

Sd-/
9-9

Additional Secretary to Government.

U/R.to A.&F.D, No. 14837-A dated the 11th September 1952.

M.R.B.
15-6-56
C.4

Legal Department-

Under section7 of the Bombay Taluqdari Tenure Abolition Act, 1949, the Collector has to make an award in the manner prescribed in section 11 of the Land Acquisition Act, 1894, of the compensation to paid to taluqdars for extinguishment of their rights. Under para.(iii) of clause(b) of sub-section(1)of section 7 if there are any trees on the land the amount of compensation shall be the market value of such trees. It is true that in this case the trees were not cut by the contractors when the administration of the Estates was taken over. The Thakores had, however, already sold the trees to the contractors, the contracts entered into by them being saved under the Act as stated in the previous opinion. They had therefore no right to the said trees. The question of paying compensation to the Thakores in respect of the trees standing on the date of the coming into force of the Act does not thus arise. The view taken in Agriculture and Forest Department's note dated the 17th September 1952 ~~seem to~~ is correct.

Sd/-
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M.R.D.
15-8-56
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U.R.to A.& F.D.No. 16439/A dated the 7th October 1952.

Legal Department.
24868/23-10-52.

Submitted.

The Vallapur Estate is put under Govt.management under G.R.R.D.No. 831/28,dated 8-12-1931, under section 26 of the Gujart Talukdars' Act, 1888. The proposal in these papers is to withdraw the Govt, management. The R.L.A. is requested to advise whether resort to section 29(F) of the said Act is possible in view its repeal by the Bombay Talukdars Tenure Abolition Act,1949. In view of the provisions of section 17 of that Act, the Revenue Department is of the view that the management can be withdrawn under section 29(F) of the Gujarat Talukdars' Act as the proceedings connetted with such management are to be disposed of as if the Act of 1949, had not been passed.

Seen and returned. The view
taken by H.L. is correct.

R.T.K.
Sd-
22-12

R.L.A.
Sd-
22-12

M.R.D.
15-6-56
C.4

M.R. to R.D. No. 21754/A dt. 24-12-52.